



BURLINGTON NORTHERN INC.

August 26, 1983

Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RECORDATION NO. 14133 Filed 1425

AUG 29 1983 10 20 AM

INTERSTATE COMMERCE COMMISSION

Dear Secretary Mergenovich:

Enclosed for filing pursuant to Section 11303 of the Interstate Commerce Act are three counterparts of an Equipment Lease Agreement (as amended) between Burlington Northern Railroad Company and MDFC Equipment Leasing Corporation.

A general description of the equipment covered by the Equipment Lease Agreement is described in Exhibit "A" to said document, copy of which is attached.

The names and addresses of the parties to this transaction are:

MDFC Equipment Leasing Corporation
100 Oceangate
Long Beach, California 90801-0580

Burlington Northern Railroad Company
176 East Fifth Street
St. Paul, Minnesota 55101

The \$50.00 fee for your services is included in the enclosed check which covers recordation of the Lease Agreement.

Please stamp the enclosed copy of this letter and the counterparts of the Agreement with the recordation date of the Commission and return it to the bearer of this letter:

Mr. Greg Rhoads
Kunkel Transportation Services Inc.
Pennsylvania Building
Suite 523
425 - 13th Street N.W.
Washington, D.C. 20004

Very truly yours,

Lisa George

Lisa George
Paralegal
(206) 625-6771

Enclosures

No. 3-214A028

Date AUG 29 1983

Fee \$ 50.00

ICC Washington, D. C.

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I.C.C.
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Interstate Commerce Commission
Washington, D.C. 20423

8/29/83

OFFICE OF THE SECRETARY

**Lisa George
Paralegal
Burlington Northern Inc.
1111 Third Avenue
Seattle, Washington, 98101**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **8/29/83** at **10:30am**, and assigned recordation number(s). **14133**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

MDFC EQUIPMENT LEASING CORPORATION

EQUIPMENT LEASE AGREEMENT

Equipment Lease No. 807

THIS EQUIPMENT LEASE AGREEMENT ("Lease"), is dated as of the 15th day of July, 1983, and is by and between MDFC Equipment Leasing Corporation, a Delaware corporation ("Lessor") and Burlington Northern Railroad Company, a Delaware corporation ("Lessee").

WITNESSETH:

1. *Lease.* Lessor hereby agrees, subject to satisfaction of the conditions hereinafter set forth, to lease to Lessee and Lessee hereby agrees to lease from Lessor each item of equipment, (individually called an "Item of Equipment" and collectively the "Equipment") described in each Individual Equipment Record ("IER") executed and delivered by Lessor and Lessee with respect to an Item of Equipment pursuant to the terms of this Lease.

2. *Term.* The term ("Term") of this Lease for an Item of Equipment shall be as set forth on the IER applicable to such Item of Equipment for such Item of Equipment and shall commence for such Item of Equipment on the date shown on such IER ("Commencement Date"). The word "Term" as used herein shall include any extensions of the original term pursuant to the terms of this Lease.

3. *Rent.* Lessee shall pay Lessor rent for an Item of Equipment throughout the Term as set forth in the IER applicable to such Item of Equipment, without deduction or offset, in the amounts and at the times set forth in the IER applicable to such Item of Equipment. In the event Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rent or otherwise, the Lessee shall pay Lessor, as additional rent, to the extent permitted by applicable law, interest on such unpaid sum from its due date to the date of payment by Lessee at a rate equal to 125% of the Prime Rate or the maximum contract rate permitted by applicable law, whichever is lower (the "Overdue Rate"). Rent and all other amounts payable to Lessor hereunder shall be payable at the office of Lessor at 100 Oceangate, Suite 900, Long Beach, California 90802, Attention: Controller, (or at such other place as Lessor may from time to time designate in writing); except that payments of more than \$10,000 shall be made by Federal Funds wire transfer for the account of the Lessor to a bank to be designated by the Lessor, together with notice so as to provide Lessor with the use of the funds on or before 11 a.m., P.S.T., on the due date.

4. *Taxes Against Lessor or Equipment.* Lessee agrees to pay and to indemnify and hold Lessor harmless from, all license and registration fees and sale, use, personal property, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature whatsoever together with any penalties, fines or interest thereon (collectively, "taxes, fees or other charges") imposed against Lessor, Lessee or the Equipment or any part thereof by any Federal, state or local government or taxing authority, during the term or in connection with the termination of this Lease, upon or with respect to the Equipment or any part thereof or upon the purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to this Lease (excluding, however, (i) any taxes imposed by the Federal government on, based on, or measured by, the net income of the Lessor and (ii) any income or franchise taxes imposed by any taxing authority other than the Federal government on, based on, or measured by, the net income of the Lessor which in the aggregate do not exceed the amount of any such taxes which would be payable to the taxing authorities of the jurisdictions, other than the United States of America, in which Lessor has its principal place of business assuming no allocation or apportionment to any other taxing authority). In case any report or return is required to be made with respect to any obligation of Lessee under this Section or arising out of this Section, Lessee will either prepare and file such report or return in such manner as will show the ownership of the Equipment in Lessor and send a copy of such report or return to Lessor or will notify Lessor of such requirement and Lessee will prepare such report or return for filing by Lessor in such manner as shall be satisfactory to Lessor. If claim is made against Lessor for any taxes, fees for other charges referred to in this Section, Lessor shall promptly notify Lessee. If reasonably requested by Lessee in writing, Lessor shall, at Lessee's expense, take such action as Lessee may reasonably request with respect to such asserted liability, provided that Lessee furnishes an opinion of independent counsel, which opinion and counsel shall both be satisfactory to Lessor, to the effect that such action is prudent, reasonable and proper, and if reasonably so requested by Lessee, any payment by Lessor of such tax, fee or other charge shall be made under protest, if protest is necessary and proper. If payment is made, Lessor shall, at Lessee's expense, take such action as Lessee may reasonably request to recover such payment and shall, if requested, permit Lessee in Lessor's name to file a claim or prosecute an action to recover such payment. All of the obligations of Lessee under this Section with respect to any taxes, fees, or other charges imposed or accrued before the expiration or other termination of this Lease shall continue in full force and effect notwithstanding such expiration or other termination and are expressly made for the benefit of, and shall be enforceable by, Lessor.

5. *Lessee's Failure to Pay Taxes, Insurance, Etc.* Should Lessee fail to make any payment or do any act as herein provided, then Lessor shall have the right, but not the obligation, without releasing Lessee from any obligation hereunder, to make or do the same, and to pay, purchase, contest or compromise any Lien (as defined in Section 20 hereof) not permitted hereunder which in Lessor's judgment appears to affect the Equipment or Lessor's rights with respect thereto, and in exercising any such rights, incur any liability and expend whatever amounts in its discretion it may deem necessary therefor. All sums so incurred or expended by Lessor shall be immediately due and payable by Lessee and shall bear interest at the Overdue Rate from the date so incurred or expended by Lessor to the date Lessor is reimbursed therefor by Lessee.

6. *Use and Ownership.* Lessee shall use, operate, maintain and store the Equipment in a careful and proper manner and shall comply with all laws, ordinances, rules and regulations in any way relating to the possession, use, operation or maintenance of the Equipment. Lessee shall use the Equipment only in the manner contemplated by the manufacturer thereof. Lessee agrees to pay all costs incurred in connection with the use and operation of each Item of the Equipment, during the Term thereof, including but not limited to, repairs, maintenance, storage and servicing, except to the extent that such costs are paid by the manufacturer.

Lessee acknowledges and agrees that it does not have and will not acquire legal title to the Equipment, it being expressly understood that this Lease is an agreement of lease only. The Equipment is and shall at all times remain the sole and exclusive property of Lessor. The only interest Lessee shall have in the Equipment is that of a lessee hereunder. Lessee shall affix to each Item of Equipment and keep and maintain, plainly and distinctly, permanently and conspicuously upon each such Item of Equipment the following words:

"Owned by MDFC Equipment Leasing Corporation
Owner-Lessor"

Lessee shall keep the Equipment free from any markings or labeling which might be interpreted as a claim of ownership thereof by Lessee or any party other than Lessor or its assigns. Lessee shall not remove an Item of Equipment from the location set forth in the IER applicable to such Item of Equipment or transfer possession of the Equipment in any manner without Lessor's prior written consent. Upon demand by Lessor, Lessee promptly shall give Lessor written notice of the exact location of the Equipment.

7. *Alterations.* Lessee shall not make any alterations, additions or improvements to the Equipment without the prior written consent of Lessor. All such alterations, additions or improvements so consented to by Lessor shall become the property of Lessor and shall be free of all Liens. Lessee shall provide a bill of sale to Lessor for all such alterations, additions or improvements.

8. *Maintenance and Repair.* Lessee, at its sole cost and expense, shall keep the Equipment in good operating order, repair, condition and appearance and shall furnish any and all parts, mechanisms or devices required to keep the Equipment in good mechanical and working order. In performing maintenance and repair, Lessee shall comply with all the manufacturer's specifications and recommendations.

9. *Delivery and Acceptance.* Prior to execution of each IER Lessee shall have made at its expense all necessary inspections and tests of the Item or Items of Equipment to determine whether each such Item of Equipment conforms to the Lessee's specifications. Upon execution of each IER by Lessee, the Item or Items of Equipment described therein shall be deemed to conform to Lessee's specifications, shall be deemed to be in good condition and without defects and shall be deemed to be an Item of Equipment subject to the terms of this Lease.

10. *Inspection; Lessee Reports.* Lessor shall at all times during normal business hours have the right to enter the premises where the Equipment may be located for the purpose of inspecting and examining the Equipment, its condition, use, and operation to ensure compliance by Lessee with its obligations hereunder, provided, that Lessor shall have no duty to inspect and shall not incur any liability or obligation by reason of not making any such inspection.

Lessee shall immediately notify Lessor of any accident connected with the Equipment, including in such report the time, place and nature of the accident, the damage caused to property, the names and addresses of persons injured and of witnesses, and such other information as may be relevant to such accident.

Lessee shall, as soon as practicable after the close of each quarter and fiscal year of Lessee during the Term, furnish to Lessor copies of Lessee's financial reports prepared by it as of the close of the period ended, including Lessee's balance sheet and profit and loss statement, with said fiscal year reports certified to by a recognized firm of independent certified public accountants. Lessee also agrees to furnish Lessor during the Term, promptly upon their availability, copies of all financial statements, reports, notices and proxy statements, sent by Lessee to its stockholders, and of all regular and periodic reports filed by Lessee with the principal securities exchange on which the common stock of Lessee is listed, if any, or with the Securities and Exchange Commission, including but not limited to 10K and 10Q reports. Further, Lessee agrees to furnish Lessor from time to time such other information as Lessor may reasonably request.

11. *Warranties.* LESSOR IS NOT A MANUFACTURER OF THE EQUIPMENT OR A DEALER IN SIMILAR EQUIPMENT AND HAS NOT INSPECTED THE EQUIPMENT PRIOR TO DELIVERY TO AND ACCEPTANCE BY LESSEE. LESSOR BY VIRTUE OF HAVING LEASED THE EQUIPMENT UNDER THIS LEASE OR BY VIRTUE OF ANY NEGOTIATIONS IN RESPECT OF THIS LEASE HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO TITLE, CONDITION, COMPLIANCE WITH SPECIFICATIONS, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR USE OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT. THE EQUIPMENT IS LEASED HEREUNDER BY LESSOR "AS-IS".

Lessor hereby represents to Lessee that Lessor has the full right and authority to enter into this Lease on the terms herein stated, and that, conditioned upon Lessee performing all of the terms, covenants and conditions hereof, Lessor, its successors and assigns will not disturb Lessee's peaceable and quiet possession and use of the Equipment during the Term of this Lease.

So long as and only so long as no Event of Default has occurred and is continuing, Lessor hereby authorizes Lessee during the Term of this Lease to assert for the Lessor's account all of its right, title and interest in, under and to any warranty in respect of the Equipment issued by the manufacturer thereof, and agrees to execute and deliver such further instruments as may be reasonably necessary to enable Lessee to enforce such warranty. All claims or actions on any warranty shall be made or prosecuted by Lessee, at its sole cost and expense, and Lessor shall have no obligation whatsoever to make any claim on such warranty. Any recovery under such a warranty shall be applied first to restore the Equipment; second, to pay the reasonable out-of-pocket expenses Lessee incurs in enforcing such warranty claim; and third, to pay any balance to Lessor. Lessor further authorizes Lessee to obtain whatever service to the Equipment the manufacturer customarily renders, provided that no such service shall be at the cost or expense of the Lessor.

12. *Insurance.* Throughout the Term of this Lease, Lessee at its own expense shall maintain with respect to each Item of Equipment, as provided in the IER relating thereto, (a) all risk physical loss insurance on such Item of Equipment for an amount at least equal to the Stipulated Loss Value set out in the IER for such Item of Equipment from time to time, and (b) public liability and property damage insurance with respect to such Item of Equipment as set forth in the IER. Said insurance shall be primary insurance up to and including the stated policy limits and not excess over other coverage. Such insurance shall (i) with respect to liability insurance, name Lessor as an additional named insured, (ii) with respect to all risk physical loss insurance, name Lessor as loss payee and additional named insured, and (iii) be with companies satisfactory to Lessor. There shall be no right of contribution with respect to any insurance maintained by Lessor. All insurance required hereunder shall provide that coverage may not be altered or canceled by the insurer without thirty (30) days' prior written notice to Lessor. Losses shall be adjusted only with and paid to, Lessor and its assignee, if any. All such insurance required hereunder shall be satisfactory to Lessor and shall contain such endorsements as may be requested by Lessor. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of and execute and endorse all documents, checks or drafts for loss or damages or return premium under any insurance policy issued on the Equipment. Lessee's obligation to keep the Equipment insured as provided herein shall continue until the Equipment is returned to Lessor pursuant to the provisions hereof.

Lessee shall furnish Lessor with insurance certificates evidencing such insurance prior to the Commencement Date of the applicable IER.

For purposes of this Lease the term "Stipulated Loss Value" for an Item of Equipment as of any date of computation shall be the product of (x) the total cost paid by Lessor for such Item of Equipment as set forth in the IER applicable to such Item of Equipment and (y) that Stipulated Loss Value percentage set forth in such IER opposite the applicable rental payment with respect to such Item of Equipment. The applicable rental payment shall be that rental payment which includes the rental for the date of computation.

13. Risk, Event of Loss, Condemnation.

(a) *Risk:* Commencing on the Commencement Date and continuing until the expiration of the Term of this Lease and the return by Lessee of the Equipment to Lessor pursuant to the provisions hereof, Lessee assumes the entire risk of any Event of Loss (as defined below) and no such Event of Loss shall relieve Lessee of any of its obligations hereunder.

(b) *Definition – Event of Loss:* For purposes of this Section an Event of Loss with respect to an Item of Equipment shall mean any of the following events: (i) the actual or constructive total loss of such Item of Equipment; or (ii) such Item of Equipment shall become lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for its intended use for any reason whatsoever; or (iii) the condemnation, confiscation or seizure of, or requisition of title to or use of, such Item of Equipment; or (iv) the termination, for any reason whatsoever, of this Lease by operation of law.

(c) *Deprivation Constituting an Event of Loss:* Upon the occurrence of an Event of Loss, Lessee shall pay or cause to be paid to Lessor, on the date of loss, in immediately available funds: (i) accrued rentals on a daily basis, if any, in respect of such Item of Equipment to the date of such Event of Loss, (ii) the Stipulated Loss Value for such Item of Equipment computed as of the date of such Event of Loss, (iii) interest on the unpaid balance of the amount set forth in (i) and (ii) above at the Overdue Rate from the date of such Event of Loss to the date of receipt, (iv) any taxes which may be due, and (v) all other unpaid amounts due hereunder. At such time as Lessor has received the sum of (i), (ii), (iii), (iv) and (v) above, the obligation of Lessee to pay rent hereunder with respect to such Item of Equipment shall terminate and Lessor will transfer to Lessee, without recourse or warranty, "as is, where is", all of Lessor's right, title and interest, if any, in and to the Item of Equipment with respect to which such Event of Loss occurred.

(d) *Deprivation Not Constituting an Event of Loss:* In the event of damage to any Item of Equipment not constituting an Event of Loss, Lessee shall promptly notify Lessor in writing of such damage and shall remain obligated to make all payments of rent and other amounts due with respect to such Item of Equipment which may become due hereunder in the same manner as if such damage had not occurred. Lessee shall repair and restore such Item of Equipment with new and unused components to the condition it was in immediately prior to the occurrence of such damage which gave rise to such payment (assuming such Item of Equipment was maintained in accordance with the terms of this Lease). So long as no Event of Default shall have occurred and be continuing, all payments from insurance proceeds or otherwise with respect to any such damage shall be used to reimburse Lessee for its out-of-pocket expenses upon receipt by Lessor of satisfactory evidence that Lessee has repaired such Item of Equipment. Should an Event of Default have occurred and be continuing, all such payments shall be paid over to and retained by Lessor.

(e) *Application of Payments:* Upon the occurrence of any Event of Loss, Lessor shall be entitled to and shall receive the entire award, judgment, settlement, insurance proceeds or payments and all installments thereof to the extent of Lessee's obligations under 13(c) hereof. Lessee hereby assigns to Lessor any right or interest Lessee may have or may hereafter acquire in any such award or payment.

14. *Indemnity.* Lessee agrees to defend at its own cost and to indemnify and hold harmless Lessor, its successors and assigns, and their respective agents and employees, from and against any and all losses, claims, patent infringements, costs, expenses, (including attorneys' fees) damages and liabilities (including those for strict liability in tort), however caused, resulting directly or indirectly in any manner from the issuance of Lessor's purchase order, assignment of Lessee's purchase order or agreement to purchase, ownership, purchase, Lessee's failure, delay or refusal to accept delivery, lease, possession, return, disposition, or directly or indirectly from or pertaining to the use, condition (including without limitation latent or other defects whether or not discoverable) or operation of the Equipment or the performance of this Lease (including without limitation such losses, claims, costs, expenses, damages and liabilities arising from the death or injury to agents or employees of Lessee or Lessor or any third person, or damage to the property of Lessee or Lessor, their agents or employees, or any third person) except for such damages, losses, expenses or liabilities arising out of the gross negligence or willful misconduct of Lessor, its agents or employees. This indemnification shall survive the expiration or other termination of this Lease and is for the benefit of and enforceable by the Lessor.

15. *Return of Equipment.* Upon the expiration or earlier termination of the Term of this Lease with respect to an Item of Equipment, Lessee shall return such Item of Equipment to Lessor, free of all advertising or insignia placed thereon by Lessee, free and clear of all mortgages, liens, security interest, charges, encumbrances and claims, and in the same operating order, repair, condition and appearance as when received, and shall pay for any repairs and refurbishing necessary to restore such Item of Equipment to its original condition, ordinary wear and tear excepted. Lessee shall return such item of Equipment to Lessor loading and shipping same, freight and insurance prepaid, to a destination directed by Lessor.

In addition, Lessee shall permit Lessor to store any such Item of Equipment for a period not to exceed ninety (90) days after the expiration of the Term. The storage of the Equipment shall be at the expense and risk, to the extent of the Stipulated Loss Value of the Equipment, of the Lessee until such Item of Equipment shall have been delivered to Lessor. Notwithstanding anything to the contrary contained herein, commencing on the expiration of the Lease Term and throughout the Lessor's ninety (90) day storage period the Lessee shall provide the Lessor, or any person designated by it, access to such Equipment and will allow the Lessor to display the Equipment to any authorized representative or representatives of prospective purchasers or lessees of such Equipment or Lessor's agent, and will permit said representative or representatives or agent to examine the books and records of the Lessee relating to such Equipment. The delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of the Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

Notwithstanding the foregoing, if Lessor and Lessee have agreed to specific return conditions for each Item of Equipment (which shall be included either as an addendum to this Lease Agreement, or within the Special Conditions section of the IER applicable to each Item of Equipment), then such return conditions shall be controlling to the extent that the conditions are inconsistent with those contained in this section.

16. Default, Remedies, Damages.

(a) *Defaults:* The following events shall constitute Events of Default:

(1) Lessee shall fail to make any payment to Lessor or to third parties, when due under this Lease and such failure to pay shall continue for period of ten (10) or more days after the due date thereof; or

Initials 
Lessee

(2) There shall occur any termination of, material alteration in the scope of the coverage of, or reduction in the maximum amounts payable under any insurance maintained by Lessee pursuant to this Lease; or

(3) Lessee shall fail to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure shall continue unremedied for period of thirty (30) days; or

(4) Any representation or warranty made by Lessee herein or in any document or certificate furnished Lessor in connection herewith shall prove to be incorrect at any time in any material respect; or

(5) Any obligation of Lessee for the payment of borrowed money, for the deferred purchase price of property or for the payment of rent or hire under any lease shall not be paid when due, whether by acceleration or otherwise; or

(6) There shall (i) be entered a decree or order for relief by a court having jurisdiction in respect of Lessee in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal, state or foreign bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Lessee or for all or substantially all of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days, or (ii) be commenced by Lessee a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Lessee or for all or substantially all of its property or the making by it of any assignment for the benefit of creditors.

(b) *Remedies:* Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor, at its option, may declare this Lease in default and Lessor may do one or more of the following with respect to the Equipment or any Item of Equipment as Lessor in its sole discretion shall elect, to the extent permitted and subject to compliance with any mandatory requirements of applicable law:

(1) Proceed by appropriate court action or actions either by law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease and to recover damages for the breach thereof;

(2) Repossess with or without notice and sue for the rentals due hereunder as they accrue without notice and at Lessee's costs and expenses;

(3) Repossess and without terminating the Lease hold the Item of Equipment until Lessee shall have complied with all obligations under the Lease;

(4) Repossess with or without notice and sell, relet, use, hold or otherwise dispose of the Item of Equipment;

(5) Without repossessing and with or without notice, declare all unpaid rentals immediately due and payable;

(6) Repossess and terminate the Lease.

(c) *Damages:* Lessor and Lessee agree that the measure of damages is impossible to determine in the absence of prior agreement. Therefore, the parties agree that as damages for the loss of a bargain and not as a penalty in the case of sale or reletting after repossession Lessor shall be entitled to:

(i) *Sale:* Where a sale with respect to an Item of Equipment has occurred, the excess, if any, of the Stipulated Loss Value with respect to such Item of Equipment at the time of sale over the Net Proceeds of Sale with respect to such Item of Equipment. Where a sale has not yet occurred, the excess of the then Stipulated Loss Value with respect to such Item of Equipment at the time of determination (such time to be specified by the Lessor) over the then Aggregate Fair Market Sales Value with respect to such Item of Equipment.

(ii) *Re-lease:* Where a re-lease with respect to an Item of Equipment has occurred, the deficiency between the aggregate rentals due under the re-lease with respect to such Item of Equipment discounted at the Discount Rate and the greater of (a) the Stipulated Loss Value at re-lease, or (b) the aggregate remaining unpaid lease rentals with respect to such Item of Equipment due hereunder discounted at the Discount Rate. Where a re-lease with respect to such Item of Equipment has not yet occurred, the deficiency between the Aggregate Fair Market Rental Value with respect to such Item of Equipment discounted at the Discount Rate and the greater of (a) the Stipulated Loss Value with respect to such Item of Equipment at time of determination (such time to be specified by the Lessor), or (b) the aggregate remaining unpaid lease rentals thereunder discounted at the Discount Rate, and

(iii) In addition to either (i) or (ii) above, Lessor shall be entitled to: (a) the unpaid rent from default until sale, re-lease or determination by Lessor of damages, and (b) interest on all amounts due including rent and damages from date due until payment at the Overdue Rate.

For purposes of this Lease the following definitions apply:

(1) *Discounted:* Reduction to present value as of the date of sale, re-lease or determination of damages, whichever is applicable, at the Discount Rate and at a frequency equal to the frequency of rental payments under this Lease.

(2) *Aggregate Fair Market Rental or Aggregate Fair Market Sales Value:* The fair market rental value or fair market sales value of an Item of Equipment as determined by a recognized independent appraiser selected by Lessor.

(3) *Net Proceeds of Sales:* The consideration received by Lessor upon sale of an Item of Equipment less all expenses associated directly or indirectly with sale including but not limited to refurbishing, repair, advertising, freight, and financing costs.

(4) *Discount Rate:* A rate equal to the Prime Rate at the Date of Default.

(5) *Prime Rate:* A rate of interest equal to the prime rate quoted from time to time by the Chase Manhattan Bank N. A.

(d) Each and every power and remedy herein specifically given to Lessor, shall be in addition to every other power and remedy specifically so given or now or hereafter existing at law or in equity, and each and every power or remedy may be exercised from time to time or simultaneously and so often and in such order as may be deemed expedient by Lessor. All such powers and remedies shall

be cumulative to the extent permitted by applicable law, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or any acquiescence therein. In the event that Lessor shall bring any suit or action to enforce any of its rights hereunder, then in such suit or action Lessor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

Lessee hereby appoints Lessor, Lessee's irrevocable agent and attorney-in-fact to execute all documents deemed necessary to release, terminate and void Lessee's interest in the Equipment and to file said documents for recordation with appropriate agencies provided that an Event of Default has occurred and Lessor in its discretion deems use of this agency necessary to effect any remedy Lessor chooses to take.

17. *Assignment by Lessee.* Lessee shall not transfer, assign, pledge or hypothecate this Lease, the Equipment or any part thereof or any interest therein, without the prior written consent of Lessor. Consent to any of the foregoing acts shall not be deemed to be consent to any subsequent similar act.

18. *Assignment by Lessor.* Lessor may assign, pledge or in any other way transfer this Lease and the Equipment in whole or in part, or any interest therein without notice to Lessee and Lessee shall execute such consents thereto as may be required by Lessor. Should this Lease or any interest therein be assigned or should the rentals hereunder be assigned, no breach or default by Lessor of this Lease or any other agreement between Lessee and Lessor shall excuse performance by Lessee of any provision hereof, and no assignee shall be obligated to perform any covenant, condition or obligation required to be performed by Lessor hereunder. The rights of such assignee shall be free of all defenses, setoffs and counterclaims which Lessee might now or hereafter be entitled to assert against Lessor.

19. *Personal Property.* The Equipment shall remain personal property regardless of whether it becomes affixed or attached to real property or permanently rests upon any real property or any improvement thereon, and Lessee shall do all acts and enter into all agreements necessary to insure that the Equipment remains personal property.

Lessee shall keep the Equipment free and clear of any liens, charges, encumbrances or claims of the owner or owners of any interest in the real estate on which it is installed and any purchaser of or present or future creditor obtaining a lien on such real estate, and shall obtain and deliver to the Lessor on the Commencement Date a waiver of any such liens or claims as to the Equipment in recordable form satisfactory to Lessor.

20. *Liens.* Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance, security interest, right or claim of any kind ("Lien") on, or with respect to, any Item of Equipment, title thereto or any interest therein, except:

(i) the respective rights of Lessor and Lessee under the Lease;

(ii) Liens which result from claims against or acts of Lessor not related to its interest in the Equipment;

(iii) Liens for taxes either not yet due or being contested in good faith and by appropriate proceedings so long as such proceedings do not involve any danger of the sale, forfeiture or loss of any Item of Equipment or any interest therein; and

(iv) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business and securing obligations which are not delinquent, or which are being contested by Lessee in good faith and by appropriate proceedings so long as such proceedings do not involve any danger of the sale, forfeiture or loss of such Item of Equipment or any interest therein.

Lessee will promptly notify Lessor in writing of the existence of any Lien not excepted above, if the same shall arise at any time, and will promptly, at Lessee's expense, cause any such Lien to be duly discharged, dismissed and removed or fully bonded as soon as possible, but in any event within thirty days after the existence of the same shall have first become known to Lessee.

21. *Prohibition Against Setoff, Counterclaim, Etc.* Lessee's obligation to pay all amounts due hereunder shall be absolute and unconditional and shall not be affected by any circumstance whatever, including, without limitation (i) any setoff, counterclaim, defense, or other right which Lessee may have against Lessor, (ii) any defect in the title, condition, design, operation, or fitness for use of, or any damage to or loss or destruction of, the Equipment, or any interruption or cessation in the use of possession thereof by Lessee for any reason whatsoever, or (iii) any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee or Lessor.

22. *Representation, Warranties and Covenants of Lessee.* Lessee represents, warrants and covenants: (i) that it is a duly organized corporation with necessary power and qualifications to perform this Lease, (ii) that this Lease has been duly authorized by all necessary corporate action on the part of the Lessee and will not contravene or breach any legal, organizational or contractual regulation binding upon Lessee, (iii) that this Lease constitutes valid, binding and enforceable obligations of Lessee and is enforceable in accordance with its terms, (iv) that as of the date of each IER there are no suits or proceedings pending or threatened against Lessee which may have a material adverse effect on Lessee's financial condition or business, and (v) that as of the date of each IER no material adverse change in Lessee's financial condition as represented in its most recent financial statements submitted to Lessor has occurred.

23. *Attorneys' Fees.* In the event of any action at law or suit in equity in relation to this Lease, Lessee, in addition to all other sums which Lessee may be called upon to pay, will pay to Lessor the amount of its attorney's fees.

24. *Notices.* All notices required under the terms and provisions hereof shall be in writing and addressed (i) if to Lessee:

Burlington Northern Railroad Company
176 E. 5th Street
St. Paul, Minnesota 55101
Attention: C. C. Roberts, Vice President

or at such other address as Lessee shall from time to time designate in writing to Lessor, or (ii) if to Lessor:

MDFC Equipment Leasing Corporation
100 Oceangate, Suite 900
Long Beach, California 90802

Attention: Commercial and Industrial
Financing

or at such other address as Lessor shall from time to time designate in writing to Lessee.

25. *Conditions Precedent.* As conditions precedent to Lessor's duties under this Lease, Lessee shall furnish Lessor on or before the Commencement Date for each IER under this Lease the following, all of which shall be satisfactory to Lessor: (a) an opinion of counsel for Lessee with respect to those representations set forth in Section 22 (i) through (iv) inclusive hereof and with respect to such other matters as Lessor may require, (b) resolutions by Lessee's board of directors authorizing this Lease and Lessee's performance hereunder certified by the Secretary of Lessee, (c) certificates of insurances, (d) real property waivers, if applicable, and (e) such other documents and evidence of authority for Lessee as Lessor may require.

26. *Miscellaneous.* This lease shall in all respects be governed by and construed in accordance with the laws of the State of California including all matters of construction, validity, effect and performance. Venue for all actions under this Lease shall be in the State of California, Counties of Los Angeles or Orange. Lessee and Lessor agree to the jurisdiction of the federal and state courts sitting in such counties. Lessee and Lessor further agree that any summons in an action related to this Lease may be served by mailing it registered mail to the address provided in Section 24 hereof.

No delay or omission to exercise any right, power or remedy accruing to Lessor upon any breach or default by Lessee under this Lease shall impair any such right, power or remedy by Lessor, nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default thereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default; nor shall consent by Lessor to any act of Lessee be deemed to be consent to any subsequent similar act.

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision of this Lease prohibited or unenforceable in any respect. No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in any Item of Equipment except as a lessee only.

The amount of each rental installment and any advance rental and/or security deposit set forth on each IER is based upon the estimated total cost of the Equipment to Lessor initially set forth on said IER, and each of the foregoing shall be adjusted proportionately if the cost of the Equipment differs from said estimate. Lessee hereby authorizes Lessor to correct the figures set forth on each IER when the cost is known, and to insert on such IER any serial numbers or other more specific description of the Equipment and the Commencement Date of this lease with respect to such IER when ascertained. As used herein, "cost" means the total cost to Lessor of purchasing and causing delivery and, where applicable, installation of the Equipment, including, without limitation, all taxes, insurance and transportation charges paid by Lessor in connection therewith.

27. *Recording, Registration and Filing.* Lessee shall, at its expense, accomplish all searches, recordings, registrations and filings of this Lease, required by law or requested by Lessor to protect Lessor's title and interests in the Equipment, and shall furnish Lessor with evidence satisfactory to Lessor of each search, recording, registration and filing.

28. *Tax Indemnity.* Lessee hereby represents and warrants to Lessor (such term for the purpose of this Section 28 meaning Lessor and the corporations with which Lessor consolidates its United States federal income tax returns) that:

(1) the Term of this Lease for each Item of Equipment (including extensions thereof) does not exceed 80% of the useful life of such Item of Equipment;

(2) a reasonable estimate of the fair market value of each Item of Equipment to Lessor, at the end of the Term of this Lease, without including in such value any increase or decrease for inflation or deflation during the Term of this Lease and after subtracting any costs of delivery of possession to Lessor, will not be less than 20% of Lessor's cost for such Item of Equipment as set forth in the IER "Cost";

(3) on the Acceptance Date all of the Equipment is new, unused and eligible for investment tax credit of not less than the percentage of Cost specified in the IER for each Item of Equipment;

(4) all of the Equipment is Recovery Property [as such term is defined in Section 168 of the Internal Revenue Code of 1954, as amended from time to time, and any Regulations that are or may be promulgated thereunder ("Code")] of the class specified in the IER for each Item of Equipment;

(5) the Cost does not exceed the fair market value of the Equipment and, if the Lessor purchased the Equipment from the Lessee, the Lessee's adjusted basis in the Equipment immediately prior to such acquisition; and

(6) each Item of Equipment was placed in service on the Acceptance Date; and

(7) this Lease is a true lease for all purposes, including but not limited to Federal, state and local tax purposes;

Lessee covenants to Lessor and agrees that:

(1) it will characterize the relationship herein established as a lease and will treat it as such for all purposes;

(2) Lessor shall have the sole right to utilize and to claim the investment tax credit ("ITC") provided by Section 46 of the Code, the accelerated cost recovery deductions equal to the percentage of Cost set forth in the IER ("ACRS Deductions") provided by

Section 168 of the Code and depreciation deductions based on the most accelerated method available under applicable state law equal to 100% of Cost ("Depreciation Deductions") on the Equipment in the computation of Federal, state and local tax returns and reports for each year during the Term of this Lease;

(3) it shall not utilize or claim or attempt to utilize or claim the ITC, ACRS Deductions or Depreciation Deductions for any purposes whatsoever;

(4) each Item of Equipment will be used only in the Continental United States as part of the normal business operations of the Lessee;

(5) during the Term, the Lessor will not have to recognize any item of income with respect to this lease, except amounts received by Lessor which are characterized as rent or additional rent by this Lease ("Other Income"); and

(6) it will neither take any action, nor fail to take any action, (including without limitation actions or failures to act permitted hereunder) which will have the result of causing the Lessor to recognize Other Income or to lose or to recapture all or any part of the ITC or ACRS Deductions or Depreciation Deductions attributable to the Equipment, or its ownership thereof.

In the event any of the Lessee's representations, warranties or covenants set forth in this Section 28 prove incorrect for any reason whatsoever at any time, and the Lessor recognizes Other Income or loses all or any part of the benefit of the ITC or ACRS Deductions or Depreciation Deductions attributable to the Equipment or is required to recapture all or any part of the ITC or ACRS Deductions or Depreciation Deductions attributable to the Equipment ("Loss"), the Lessee shall indemnify and shall pay to the Lessor, with respect to each Loss, a sum, which, after deduction of all taxes required to be paid by Lessor in respect of the receipt of such sum under the laws of any Federal, state or local government or taxing authority in the United States [or which would have been required to be paid by Lessor for such Loss had Lessor had sufficient gross income within the meaning of Section 61 of the Code to actually pay such tax or derive the benefit of such credit or deduction], shall be equal to (a) the amount of any additional Federal, state or local income taxes required to be paid with respect to such Loss [or would have been required to be paid by Lessor for such Loss had Lessor had sufficient gross income within the meaning of Section 61 of the Code to actually pay such tax or derive the benefit of such credit or deduction], plus (b) the amount of any penalties, interest and other additions to tax (including, but not limited to, any additions to tax because of underpayment of estimated tax) which may be payable by Lessor in connection with the Loss. The amount of payment will be reduced by any savings in Federal income taxes to be realized by Lessor in the future as a result of the Loss discounted to present value using the Discount Rate.

The liability of the Lessee to make any indemnity payments hereunder shall become fixed at the time Lessor makes payment of the tax attributable to the Loss, or if Lessor is not required to make payment of tax with respect to the Loss, the date on which Lessor files its tax return for the taxable year in which such Loss occurs, and shall be due and payable within 15 days after receipt by Lessee of written notice from Lessor as to the fixing of such liability. Lessee shall pay interest on any indemnity payment not made when due at the Overdue Rate.

The indemnification provided herein shall survive the expiration or other termination of the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized officers on the day and year first written above.

LESSOR: MDPC EQUIPMENT LEASING CORPORATION

By: *D. L. Storch*

Its: *Vice Pres.*

LESSEE: BURLINGTON NORTHERN RAILROAD CO.

By: *W. A. Dundy*

Its: *Vice President*

EXHIBIT "A"

DESCRIPTION OF EQUIPMENT

Twelve (12) Articulated Flat Cars

Car Numbers: BN 637100

637101

637102

637103

637104

637105

637106

637107

637500

637501

637502

637503

AMENDMENT NO. 1 TO LEASE AGREEMENT

THIS AMENDMENT NO. 1, entered into as of this 15th day of July, 1983, by and between MDFC EQUIPMENT LEASING CORPORATION, a Delaware corporation (hereinafter called "Lessor"), and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation (hereinafter called "Lessee");

W I T N E S S E T H:

WHEREAS, the parties hereto have simultaneously herewith entered into an Equipment Lease Agreement, dated as of this date (hereinafter called the "Lease"), providing for the lease by Lessor and the hire by Lessee of the equipment described therein; and

WHEREAS, the parties hereto now desire to amend said Lease to the extent hereinafter set forth;

NOW, THEREFORE, as a further consideration of the mutual covenants contained in the Lease, the parties hereto agree as follows:

1. The fifth line on Section 3 is hereby amended to read in full as follows:

"to date of payment by Lessee at a rate equal to 115% of the Prime Rate or the maximum contract rate permitted by applicable law,".

2. The sixth, seventh, eighth, ninth and last lines of Section 3 are hereby deleted and the following shall be substituted therefor:

"whichever is lower (the "Overdue Rate"). Rent and all other amounts payable to Lessor hereunder shall be paid by Federal Funds wire transfer for the account of the Lessor to Security Pacific National Bank, account # 016-756, 333 South Hope Street, Los Angeles, California 90017, together with notice so as to provide Lessor with the use of the funds on or before 11:00 a.m., P.S.T., on the due date".

3. The ninth line of Section 4 is hereby amended to read in full as follows:

"government on, based on, or measured by, the net or gross income of the Lessor which in the aggregate do not exceed the amount of any such".

4. The 17th and 18th lines of Section 4 are hereby amended to read in full as follows:

"Lessee may reasonably request with respect to such asserted liability, and if".

5. The second paragraph of Section 6 is hereby amended to read in full as follows:

"Lessee acknowledges and agrees that it does not have and will not acquire legal title to the Equipment (unless Lessee subsequently exercises its option to purchase the Equipment from Lessor), it being expressly understood that this Lease is an agreement of lease only. The Equipment is and shall at all times remain the sole and exclusive property of Lessor. The only interest Lessee shall have in the Equipment is that of a lessee hereunder. The Lessee will cause each Item of Equipment to be kept numbered with its identification number as set forth in the applicable IER and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in

contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Owned by MDFC Equipment Lease Corporation
Owner-Lessor"

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee of Lessor. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked thereon and will replace promptly any such names and word or words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identifying number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new identifying numbers to be substituted therefor, which consent and statement previously shall have been delivered to the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

"Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease."

6. The second line of Section 7 is hereby amended to read in full as follows:

"consent of Lessor; provided, however, that no such consent shall be required if the alterations, additions or improvements will not impair or diminish the value or utility of the Equipment. All alterations, additions or improvements to the Equipment which are permanent or not removable without damage to the Equipment shall become the property of Lessor and".

7. The second line of Section 8 is hereby amended to read in full as follows:

"condition and appearance (ordinary wear and tear excepted), and shall furnish any and all parts, mechanisms or devices required to keep the Equipment in good mechanical".

8. The first line of the second paragraph of Section 10 is hereby amended to read in full as follows:

"Lessee shall immediately notify Lessor of any accident connected with the Equipment which results in a legal proceeding or suit involving a claim of \$1,000,000.00 or more in damages, and shall include in such report the time, place".

9. The first two paragraphs of Section 12 are hereby deleted and the following language shall be substituted therefor:

"12. Insurance. The Lessee covenants and agrees that it will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained for each Item of Equipment from time to time subject to this Lease, property and public liability insurance in such amounts and against such risks and with such insurers as shall be satisfactory to the Lessor and any assignee of Lessor; provided, that, in the case of property insurance, the Lessee will be permitted to self-insure to the extent it self-insures equipment similar in nature to the Equipment which it owns or leases, but in any event, the Lessee shall maintain in effect such property insurance as is required by prudent industry practice in respect of equipment similar in nature to the Equipment. All such property insurance policies shall provide that the Lessor and the Lessee shall be named assureds and that, so long as no Event of Default has occurred and is continuing, losses shall be adjusted with the Lessee and that the proceeds thereof shall be payable to the Lessor. All proceeds of insurance received by the Lessor with respect to any Items of Equipment not suffering an Event of Loss shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to any Item with respect to which such proceeds were paid has been fully repaired. Any

such proceeds of insurance received by the Lessor with respect to an Event of Loss shall be credited toward the payment required by this Section 12 with respect to such Event of Loss.

"The Lessee covenants and agrees that it will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained public liability insurance in amounts and against risks required by prudent industry practice in respect of equipment similar in nature to the Equipment and in any event comparable to insurance maintained by the Lessee in respect of equipment which it owns or leases which is similar in nature to the Equipment. The Lessee represents and agrees that all policies of insurance carried pursuant to the first sentence of this paragraph will name the Lessor, the Lessee and any assignee of Lessor as assureds and that the coverage provided by all such policies, as in effect and satisfactorily evidenced to the Lessor on the date of the Commencement Date of the first IER hereunder, shall not be cancelled, reduced or otherwise materially changed without at least 60 days' prior written notice from the Lessee to the Lessor.

"All policies of insurance to be carried pursuant to this Section 12 shall provide that the same shall not be cancelled or materially changed without at least 30 days' prior written notice to each insured named therein. No such policy shall provide that the coverage thereunder for the benefit of the Lessor, or any assignee shall be restricted, impaired or invalidated by any breach or violation by the Lessee of warranties, declarations or conditions contained in such policies and the Lessee shall, upon the request of the Lessor or such assignee (but not more frequently than annually), furnish either a certificate of the insurer to such effect or a certificate of an officer of the Lessee or an opinion of counsel of the Lessee that no such policy contains such provisions. The Lessee covenants and agrees that it will throughout the term hereof furnish to the Lessor and such assignee certificates of insurers or other satisfactory evidence of the maintenance of the insurance required by this Section 12.

10. The second line of Section 13(b) is hereby amended to read in full as follows:

"mean any of the following events in the reasonable judgment of Lessee: (i) the actual or constructive total loss of such Item of Equipment; or (ii) such Item of Equipment shall".

11. The fourth line of Section 13(b) is hereby amended to read in full as follows:

"or (iii) the condemnation (for an indefinite period or a definite period exceeding the Term of the Lease), confiscation or seizure of, or requisition of title to or use of, such Item of Equipment; or (iv) the termination,".

12. Section 13(c) is hereby deleted in its entirety and the following is hereby substituted therefor:

"13(c) Deprivation Constituting an Event of Loss. Upon the occurrence of an Event of Loss, Lessee shall pay or cause to be paid to Lessor, on the next rental payment date applicable to such Item(s) of Equipment in immediately available funds: (i) accrued rentals in respect of such Item(s) of Equipment to and including said next rental payment date, (ii) the Stipulated Loss Value for such Item(s) of Equipment computed as of the date of such next rental payment date, (iii) interest on the unpaid balance of the amount set forth in (i) and (ii) above, at the Overdue Rate from the date of such next rental payment date to the date of receipt, (iv) any taxes which may be due, and (v) all other unpaid amounts due hereunder. At such time as Lessor has received the sum of (i), (ii), (iii), (iv) and (v), above, the obligation of Lessee to pay rent hereunder with respect to such Item(s) of Equipment shall terminate and Lessor will transfer to Lessee, without recourse or warranty, "as is, where is", all of Lessor's right, title and interest, if any, in and to the Item(s) of Equipment with respect to which such Event of Loss occurred."

13. The second line of Section 13(d) is hereby amended to read in full as follows:

"Event of Loss, Lessee shall remain obligated to make all payments of rent".

14. The fourth line of Section 13(d) is hereby amended to read in full as follows:

"had not occurred. Lessee shall repair and restore such Item of Equipment with components to the condition it was in".

15. The second line of Section 13(e) is hereby amended to read in full as follows:

"entire award, judgment, settlement, insurance proceeds or payments and all installments thereof to the extent of Lessee's remaining obligations".

16. The first line of Section 16(a)(1) is hereby amended to read in full as follows:

"(1) Lessee shall fail to make any payment to Lessor, or its assigns, when due under this Lease and such".

17. Section 16(a)(2) is hereby amended to read in full as follows:

"(2) Lessee shall fail to comply with any provision in Section 12 hereof."

18. The second line of Section 16(a)(3) is hereby amended to read in full as follows:

"observed by it hereunder and such failure shall continue unremedied for a period of thirty (30) days after receipt by Lessee of written notice of such failure; or".

19. The second line of Section 16(a)(4) is hereby amended to read in full as follows:

"connection herewith shall prove to be incorrect at any time in any material respect; provided, however, that this provision shall not apply to those representations and warranties in Section 28 hereof unless Lessee shall have failed to make in a timely manner the requisite indemnification payment; or".

20. Section 16(a)(5) is hereby deleted in its entirety.

21. Section 16(a)(6) is hereby deleted and the following is substituted therefor:

"(6) Any proceedings, other than pursuant to the Bankruptcy Reform Act of 1978, shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and such proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective;

"A petition in voluntary bankruptcy or seeking relief under any provision of the Bankruptcy Reform Act of 1978, or any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect is filed by the Lessee, or the Lessee consents to the filing of any petition against it under any such law; or

"A petition for reorganization under the Bankruptcy Reform Act of 1978, as now constituted or as hereafter amended, shall be filed against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such

ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by such trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier."

22. Section 16(c)(ii) is hereby amended to read in full as follows:

"(ii) Re-Lease. Where a re-lease with respect to an Item of Equipment has occurred, the deficiency between the aggregate rentals due under the re-lease with respect to such Item of Equipment discounted at the Discount Rate and the Stipulated Loss Value at re-lease. Where a re-lease with respect to such Item of Equipment has not yet occurred, the deficiency between the Aggregate Fair Market Rental Value with respect to such Item of Equipment discounted at the Discount Rate and the Stipulated Loss Value with respect to such Item of Equipment at time of determination (such time to be specified by the Lessor)."

23. Section 20(i) is hereby amended to read in full as follows:

"(i) the respective rights of Lessor and Lessee under the Lease (including liens against the leasehold interest of Lessee which are subordinate to the interest of the Lessor);".

24. The fifth and sixth lines of Section 22 are hereby amended to read in full as follows:

"ance with its terms, (iv) that as of the date of each IER there are no suits or proceedings pending or threatened against Lessee which in Lessee's judgment would be more likely than not to have a material adverse effect on Lessee's financial condition or business, and (v) that as of the date of each IER no material adverse".

25. The blank lines in Section 24 are hereby filled with the following address of Lessee:

"Burlington Northern Railroad Company
176 East Fifth Street
St. Paul, Minnesota 55101

Attention: C. C. Roberts, Vice-President".

26. The first two lines of Section 25 are hereby amended to read in full as follows:

"25. Conditions Precedent. As conditions precedent to Lessor's duties under this Lease, Lessee shall furnish Lessor, before the delivery date of the first Items of Equipment to be delivered hereunder, the following, all of which shall be satisfactory to Lessor: (a) an opinion of".

27. Lessee's representations and warranties, set forth in paragraphs (1), (2) and (7) of Section 28 (on page 6 of the Lease) are hereby deleted in their entirety.

28. The word "predominantly" is hereby substituted for the word "only" in paragraph (4) of the Lessee's covenants in Section 28 (on page 7 of the Lease).

29. Section 28 is hereby amended by adding the following language at the end of said Section:

"Right to Contest. In the event a claim shall be made by the Internal Revenue Service or any state, local or other taxing authority, or any person or entity, which, if successful, would result in a Loss, Lessor hereby agrees to take such action, in good faith, in connection with contesting such claim as the Lessee shall reasonably request in writing from time to time, provided that: (a) within thirty (30) days after notice by the Lessor to the Lessee of such claim

the Lessee shall have requested that such claim be contested; (b) the Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service or other relevant taxing authority in respect of such claim and either may pay the tax claimed and sue for a refund in the appropriate United States District Court, United States Court of Claims or comparable forum, or contest such claim in the Tax Court or comparable forum; (c) prior to taking such action, the Lessee shall have furnished the Lessor with an opinion of independent tax counsel chosen by the Lessee and acceptable to the Lessor, both as to counsel and substance, which acceptance and consent shall not be unreasonably withheld, to the effect that in contesting such claim Lessor is more likely than not to prevail; and (d) the Lessee shall have indemnified the Lessor in a manner satisfactory to the Lessor for any liability or loss that the Lessor may incur as a result of contesting such claim, and the Lessee shall have agreed to reimburse the Lessor, on demand, for all costs and expenses that the Lessor may incur in connection with contesting such claim, including, without limitation, (a) reasonable attorneys' and accountants' fees and disbursements, and (b) the amount of any interest, penalties or additions to tax indemnified hereunder that may ultimately be payable as a result of contesting such claim. In the case of any such claim, the Lessor agrees to notify the Lessee promptly in writing of such claim, agrees not to make payment of the tax or other liability claimed for at least thirty (30) days after the giving of such notice, agrees to keep the Lessee or its counsel informed of the progress of such claim, and to consult with the Lessee and its counsel, and to cooperate with the Lessee in good faith in order that such claim may be contested effectively. The Lessee and its counsel shall maintain confidentiality with respect to all such information insofar as is possible, consistent with the conduct of a contest hereunder.

"The Lessor shall lose its rights to be indemnified hereunder for a given taxable period with respect to any Loss if it shall enter into a settlement or compromise with the applicable authority or entity with respect to, or otherwise concede, any claim relating to such Loss for such taxable period.

30. Except as modified above, the Lease shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Amendment No. 1 to Lease Agreement to be duly executed by their authorized officers as of the date and year first set forth above.

MDFC EQUIPMENT LEASING CORPORATION

By: *W. J. Hark*
Its: *Vice Pres*

BURLINGTON NORTHERN RAILROAD COMPANY

By: *W. J. Sundry*
Its: *Vice President*

Lease Addendum No. 1

In connection with that certain Equipment Lease Agreement dated as of July 15, 1983 (the "Lease") between MDFC Equipment Leasing Corporation as Lessor (the "Lessor") and Burlington Northern Railroad Company ("Lessee") covering certain items of equipment ("Equipment") more fully described in the Individual Equipment Records ("IER") thereto it is agreed that upon execution by the parties hereto, this Lease Addendum No. 1 shall constitute a part of said Lease.

Lessee is hereby granted an option, which option shall not be assignable, to purchase AS-IS-WHERE-IS all, but not less than all of the Equipment covered by said Lease, at the expiration of the Term of each of said IER's to said Lease, for its then "Fair Market Value" (as hereinafter defined).

The term Fair Market Value shall mean the selling price that would be obtained in an arms-length transaction between an informed and willing buyer and an informed and willing seller each under no compulsion to buy or sell. Such Fair Market Value shall be determined on the basis that the Equipment is in complete compliance with all conditions specified in the Lease and IER and the Equipment is installed and/or in service and any cost of removal, preparation for shipment and transportation shall not be deducted from the market value of the Equipment.

The exercise of said option is conditioned upon the happening of the following conditions precedent: (a) Lessee has performed all of the terms and conditions of this Lease and of all other agreements between Lessor and Lessee, at the time and in the manner required therein and that neither an Event of Default nor an event which with due notice and/or lapse of time would constitute an Event of Default shall have occurred and be continuing under the Lease or any other such agreement; Lessor has received written notice of the election to exercise said option at least one hundred twenty (120) days' prior to the date upon which the original Term of the first IER of this Lease expires; and Lessee has paid to Lessor the Fair Market Value price, as set forth below, together with all taxes on or measured by such purchase price (not including taxes in the nature of an income tax based on or measured by the net or gross income of the Lessor).

The Fair Market Value shall be an amount mutually agreed upon by Lessor and Lessee. Lessee's estimate of Fair Market Value of the Equipment covered by this first expiring IER referred to shall accompany the one hundred twenty (120) days' notice set forth above; and one hundred twenty (120) days' prior to the expiration of each subsequently expiring IER, Lessee shall send its reasonable estimate of the Fair Market Value of the Equipment covered by each such IER. If Lessor and Lessee are unable to agree upon the amount of the Fair Market Value of the Equipment within sixty (60) days' after Lessor's receipt of the estimate

thereof, then the Fair Market Value shall be determined by an appraiser selected by mutual agreement. If Lessor and Lessee are not able to agree upon an appraiser, or if the Fair Market Value is not so determined within ninety (90) days' after Lessor's receipt of Lessee's notice of election to exercise the purchase options, the Fair Market Value shall be determined by American Appraisal Company. The Fair Market Value as finally determined shall bear interest for the period, if any, from the date of expiration of the IER to the date of payment, at the Overdue Rate (as such term is defined in the Lease) and Lessee shall pay the cost of any appraisal should an appraisal be necessary.

By Lessee's purchase of the Equipment covered by the first IER entered into pursuant to said Lease, Lessee agrees that it shall thereafter purchase, upon the terms and conditions set forth herein, the remainder of the Equipment covered by said Lease.

Unless Lessee has purchased the Equipment as set forth above, all the Equipment then leased shall be returned pursuant to Section 15 of the Lease.

MDFC EQUIPMENT LEASING CORPORATION

By: *D. J. Slack*

Its: *Vice Pres.*

BURLINGTON NORTHERN RAILROAD COMPANY

By: *W. A. Shindler*

Its: *Vice President*

Lease Addendum No. 2

In connection with that certain Equipment Lease Agreement dated as of July 15, 1983 (the "Lease") between MDFC Equipment Leasing Corporation as Lessor (the "Lessor") and Burlington Northern Railroad Company ("Lessee") covering the articulated rail cars more fully described in the Individual Equipment Records ("IER") thereto it is agreed that upon execution by the parties hereto, this Lease Addendum No. 2 shall constitute a part of said Lease.

Lessee is hereby granted an option, which option shall not be assignable, to renew the Lease term with respect to all, but not less than all, of the articulated rail cars covered by said Lease (herein called a "Renewal Term") for a four (4) year period at a semi-annual rental factor of 65% of the base rental factor commencing at the expiration of the Term of each of said IER to said Lease.

The exercise of said option is conditioned upon the happening of the following conditions precedent: (a) Lessee has performed all of the terms and conditions of this Lease and of all other agreements between Lessor and Lessee, at the time and in the manner required therein and that neither an Event of Default nor an event which with due notice and/or lapse of time would constitute an Event of Default shall have occurred and be continuing under the Lease or any other such agreement; Lessor has received written notice of the election to exercise said option at least one hundred twenty (120) days' prior to the date upon which the original Term of the first IER covering the articulated rail cars of this Lease expires; and Lessee has paid to Lessor the Fair Rental Value price, as set forth above, together with all taxes on or measured by such amount (not including taxes in the nature of an income tax based on or measured by the net or gross income of the Lessor).

By Lessee's renewal of the Lease term of the articulated rail cars covered by the IER entered into pursuant to said Lease, Lessee agrees that it shall thereafter renew, upon the terms and conditions set forth herein, the remainder of the articulated rail cars covered by said Lease.

Unless Lessee has renewed the Lease term of the articulated rail cars as set forth above, all the articulated rail cars then leased shall be returned pursuant to Section 15 of the Lease.

MDFC EQUIPMENT LEASING CORPORATION

BURLINGTON NORTHERN RAILROAD
COMPANY

By: D. V. Blach

By: W. A. Hendry


Its: Vice Pres.

Its: Vice President

CERTIFICATE

I, BLAIR A. GEORGE, a Notary Public in and for the State of Washington, do hereby certify that I have compared the attached copy of the Equipment Lease Agreement (as amended) to the original document and that the attached is a complete copy in all respects, including the dates, signatures and acknowledgments.

IN WITNESS WHEREOF, I have hereunto subscribed my name and have affixed my notary seal this 26th day of August, 1983.


Blair A. George
Residing in Seattle
Commission expires October 2, 1984